

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

ADIDAS AMERICA, INC. and,
ADIDAS-SALOMON, AG,

05-CV-120-ST

Plaintiffs,

ORDER

v.

KMART CORPORATION; FOOTSTAR,
INC.; MERCURY INTERNATIONAL
TRADING CORP.; ELAN IMPORTS CO.,
INC.; NEXTTEC INTERNATIONAL, INC.;
and INNOVATIVE CUSTOM BRANDS
INTERNATIONAL, INC.,

Defendants.

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BROWN, Judge.

Magistrate Judge Janice M. Stewart issued Findings and Recommendation (#307) on July 13, 2007, in which she recommended the Court deny the Renewed Motion for Summary Judgment (#279) of Defendants Kmart Corporation and Footstar, Inc. Plaintiffs and

Defendants filed timely Objections to the Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). *See also United States v. Bernhardt*, 840 F.2d 1441, 1444 (9th Cir. 1988); *McDonnell Douglas Corp. v. Commodore Business Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981), *cert. denied*, 455 U.S. 920 (1982).

This Court has carefully considered the Plaintiffs' Objections to the analysis in the Findings and Recommendation regarding Plaintiffs' "restart the clock" argument and Defendants' Objections to the analysis in the Findings and Recommendation as to the issues of laches, the degree of fame of the adidas mark, and whether Kmart ever "used the mark in commerce." Upon *de novo* review of the pleadings and the record, the Court concludes the parties' Objections do not provide a basis to modify the Findings and Recommendation.

CONCLUSION

The Court **ADOPTS** Magistrate Judge Stewart's Findings and Recommendation (#307) and, accordingly, **DENIES** the Renewed Motion for Summary Judgment (#279) of Defendants Kmart and Footstar.

IT IS SO ORDERED.

DATED this 3rd day of October, 2007.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge